

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

<b>Complaint no.</b>	:	<b>2378 of 2021</b>
<b>Date of filing complaint:</b>		<b>11.06.2021</b>
<b>First date of hearing:</b>		<b>15.07.2021</b>
<b>Date of decision</b>	:	<b>13.05.2022</b>

Rajeev Singla S/o Mr. Raj Kumar Singla R/o: H.no. 187, Urban Estate, Sector-7, Kurukshetra, Haryana-136118	<b>Complainant</b>
Versus	
1. M/s Vatika Limited 2. M/s Vatika Seven Elements Pvt. Ltd. <b>Both Address :</b> Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Flat no. 621-A, 6 <sup>th</sup> floor, Devika Towers, Nehru Place, New Delhi-110019	<b>Respondents</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Priyanka Aggarwal (Advocate)	<b>Complainant</b>
Sh. C.K. Sharma (Advocate) Sh. Dhruv Dutt Sharma (Advocate)	<b>Respondents</b>

**ORDER**

- The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	Seven Elements, Sector 89A, Gurgaon-Manesar, Haryana.
2.	Project area	14.30 acres
3.	Nature of the project	Group housing colony
4.	DTCP License	<b>41 of 2013 dated 06.06.2013</b> and valid up to <b>05.06.2017</b>
5.	Name of the licensee	Strong Infrabuild Pvt. Ltd. & Anr.
6.	RERA Registered/ not registered	<b>Registered vide memo no. 281 of 2017 valid upto 31.03.2011</b>
7.	Apartment no.	704, 7 <sup>th</sup> floor, building A2 (page 23 of complaint)
8.	Apartment measuring (super area)	1620 sq. ft
9.	Date of allotment	01.10.2013 (page 19 of complaint)
10.	Date of execution of builder buyer agreement	18.02.2015 (page 20 of complaint)
11.	Addendum to builder buyer agreement	30.03.2015 (page 91 of complaint)
12.	Possession clause	<b>13. Schedule for possession of the said apartment</b>  <i>The Developer based on its present plans and estimates and subject to</i>



		<i>all just exceptions , contemplates to complete construction of the said Building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 &amp; 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i>
13.	Due date of possession	18.02.2019
14.	Total basic sale price as per SOA dated 13.07.2021 (annexure R5, page 109 of reply)	Rs. 1,14,21,000/-
	Total sale consideration as per SOA dated 13.07.2021 (annexure R5, page 109 of reply)	Rs. 1,24,46,670/-
15.	Amount paid by the complainant as per SOA dated 13.07.2021 (annexure R5, page 109 of reply)	Rs.1,09,51,372/-
16.	Occupation Certificate	Not received
17.	Offer of possession	Not offered
18.	Delay in handing over possession	3 years 2 months 25 days

**B. Facts of the complaint:**

3. The complainant has approached the respondents for booking a residential apartment in the project "Seven elements" Sector-89A, Gurugram. The initial booking amount of Rs. 6,00,000/- was paid through cheque dated 03.04.2013. The complainant on 01.10.2013 was allotted the unit no. 704, 7<sup>th</sup> floor, tower-A2, admeasuring 1620 sq. ft. in the project being developed by the respondents.
4. That the respondents to dupe the complainant in their nefarious net even executed builder buyer agreement only on 18.02.2015, followed by an addendum to builder buyer agreement executed between the parties to the dispute on 30.03.2015, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement, persistently raised demands due to which they were able to extract huge amount of money from the complainant.
5. The total cost of the said apartment is Rs.1,24,46,670/-including basic, EDC/IDC IFMS, corner PLC as per account statement dated 01.08.2019. A sum of Rs 1,09,51,372/- was paid by the complainant in time bound manner to the respondent till date and only last instalment is remains to be paid as per the payment schedule.
6. That one-sided development agreement and inordinate delay in possession has been one the core concerns of home buyers. The terms of the agreement are non-negotiable and buyers even if they do not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been



unfairly exploited by the builder vis-a-viz the buyers' conditions. The complainant was subjected to unethical trade practice as, builder buyer agreement provides escalation cost, hidden charges which was to be forcibly imposed on the buyer at the time possession, the tactics and practice used by the builder being biased, arbitrary & discriminatory in nature.

7. That as per construction status and absence of amenities, the respondent would take more time to offer physical possession to the complainant of allotted unit as many times, he visited the office of respondents and requesting refund of amount along interest and the builder always given false assurances about completion of unit.
8. That the complainant made repeated request and wrote the letter on dated 17.02.2021 to them to refund the paid amount with an interest on 18% per annum but he did not get any reply. The builder in last 3 years, many time made false promises for possession of apartment and current status of project still desolated and raw after extracting more than 85% of the amount. The builder breached the trust and agreement of sale. That as per section 19 (6) of the Act, 2016, the complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of its terms of the agreement.
9. That keeping in view the snail pace of work at the construction site and half-hearted promises of the respondents, and trick to

extract more and more money from complainant pocket seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondents consequently injuring the interest of the buyers including the complainant who has spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondents conducted their business and the lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.

10. That the respondents have failed to complete the project and obtain the occupancy certificate for unit. The complainant has suffered a great financial loss, mental trauma and he had suffered a great set back. So, he withdraws from the project and seeking refund of the amount deposited with the respondents besides interest and compensation.

**C. Relief sought by the complainant:**

11. The complainant has sought following relief(s):
  - i. Direct the respondents to refund the entire paid amount to the complainant and consequently pay him an amount of Rs.1,09,51,372/- with interest @ 18% per annum calculated from the date of respective deposit till the date of actual realization.
  - ii. Direct the respondents to pay Rs. 12,00,000/- as damage/compensation to the complainant for subjecting him



to long period of mental harassment and agony and litigation charges Rs.2,00,000/-.

**D. Reply by respondents:**

12. Though while filing the complaint, the complainant added M/s Vatika Seven Elements Private Limited & M/s Vatika Limited as respondents being developer and confirming party respectively on the basis of builder buyer agreement dated 18.02.2015 followed by addendum to that agreement dated 30.03.2015 but written reply was filed by M/s Vatika Seven Elements Private Limited on 15.07.2021, which is also being treated as written reply to have been filed by M/s Vatika Limited i.e., respondent no.2
13. That at the outset, respondents humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts. The reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
14. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a

particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainant has also misdirected in claiming refund on account of alleged delayed offer for possession. It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said apartment within a period of 48 months from the date of execution of the agreement unless there shall be delay due to force majeure events and failure of allottee to pay in time the price of the said apartment.

15. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer then the developer shall be automatically entitled to the extension of time for delivery of possession. Further the developer may also suspend the project for such period as it may consider expedient.
16. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below: -
  - (a) Unexpected introduction of a new national highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads



by Haryana Urban Development Authority which took around 3 years in completing the land acquisition process.

- (b) The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its notification dated 11.04.2018 made the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.
- (c) The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- (d) Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs. was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road levels, however due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.

- (e) Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.
- (f) Direct impact on project due to policy of NILP and TOD issued on 09.02.2016.
- (g) Various orders passed by Supreme Court/NGT/EPCA regarding ban on construction activities.

Due to outbreak of Covid 19, real estate sectors have been majorly impacted which has hampered the construction of the project.

17. That it is not disputed that due to the outbreak of covid 19, the entire world went into lockdown and all the construction activities were halted and no laborer's were available. In fact, all the developers are still facing hardship because of acute shortage of laborer's and even the rera, Gurugram has vide order dated 26.05.2020 declared the covid 19 as a calamity under the force majeure clause and therefore there cannot be said to be any delay in delivering the possession by the respondent.
18. That the project "seven elements" has been registered with the authority vide registration no. 281 of 2017. That due to the various reasons and not limited to delay on the part of the allottees, NGT notifications, covid-19 pandemic, etc. the project has been majorly impacted. However, respondent endeavors to handover the unit soon.
19. That even after making delayed payments by the complainant, the respondent no.2 has constructed the complete the tower in which his unit falls. The super structure of tower A-2 is completed



including all the works and final finishing of said tower and unit are soon to be completed.

20. That the complaint of the complainant should be dismissed on account of misjoinder of parties as Vatika limited is not the developer of the project in question.
21. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the total consideration of Rs. 1,24,46,670/- of the apartment, the amount actually paid by the complainant is Rs. 1,09,51,372/. It is further submitted that there is an outstanding amount of Rs. 10,56,095/- including interest payable by the complainant as on 13.07.2021 as per the construction linked plan opted by the complainant. It is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the apartment from the very inception. It is submitted that under such facts and circumstances the complainant is not entitled to any relief as prayed for by the complainant in the present complaint.
22. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

23. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that

it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### **E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E. II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-



compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Entitlement of the complainants for refund:**

**F.1 Direct the respondents to refund full amount i.e., Rs. 28,02,318/- deposited by the complainants along with interest at the rates prescribed by the Act of 2016.**

24. Vide letter dated 01.10.2013 (annexure P2), the complainant was allotted the subject unit by the respondents for a total sale consideration of Rs. 1,24,46,670/-. A buyer's agreement dated 18.02.2015 followed by an addendum to that agreement dated 30.03.2015 was executed between the parties. The due date of possession of the subject unit was fixed as 48 months from the date of signing of agreement which comes to 18.02.2019. After signing of flat buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs. 1,09,51,372 /- as is evident from statement of account dated 13.07.2021. It is the case of complainant that since the construction of project was not as per schedule of payment, so he stopped making remaining amount due. So, keeping in view the fact that the allottee-complainant wished to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.

25. The due date of possession as per agreement for sale as mentioned in the table above is 18.02.2019 and there is delay of 2 years 7 months 27 days on the date of filing the complaint.
26. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021*

"" .... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

27. Further in the judgement of the hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.* it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the



*State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
29. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
30. The authority hereby directs the promoters to return the amount received by them i.e., Rs. 1,09,51,372/- with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F.II Litigation expenses & compensation**

The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the Authority:**

31. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoters are directed to refund the amount i.e., Rs.1,09,51,372/-received by them from the complainant along with interest at the rate of 9.40% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till date of refund of the deposited amount.



ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint stands disposed of.

33. File be consigned to the Registry.

V.I-  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2022

  
(Dr. KK Khandelwal)

Chairman



**HARERA**  
GURUGRAM

